

King-Hackney, Ashadee

From: Manville, Jennifer
Sent: Monday, December 07, 2015 11:41 AM
To: Manville, Jennifer
Subject: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session
Attachments: Swartzletter.Jan2012.doc

----- Forwarded by Jennifer Manville/R5/USEPA/US on 12/07/2015 12:40 PM -----

From: Jennifer Manville/R5/USEPA/US
To: Diane Nelson/R5/USEPA/US@EPA,
Cc: Benjamin Giwojna/R5/USEPA/US@EPA, Kestutis Ambutas/R5/USEPA/US@EPA
Date: 03/26/2012 03:07 PM
Subject: Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Attached is the draft that I provided Casey. The information in the letter is based on the input from ARD and WD.

(See attached file: Swartzletter.Jan2012.doc)

▼ Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session 

**Diane
Nelson**

to: Jennifer Manville

03/26/2012 02:07 PM

Cc: Benjamin Giwojna, Diane Nelson, Kestutis Ambutas

From: Diane Nelson/R5/USEPA/US

To: Jennifer Manville/R5/USEPA/US@EPA

Cc: Benjamin Giwojna/R5/USEPA/US@EPA, Diane Nelson/R5/USEPA/US@EPA, Kestutis Ambutas/R5/USEPA/US@EPA

Welcome back!

Oh, I see - I didn't realize there was an official letter or response. I thought all was informal. Sorry for the confusion.

Does the KBIC response have an air program element to it? If so, we would like to see the response.

I agree the response to LRB should be informal. Thanks for your speedy reply.

Di

▼ Jennifer Manville---03/26/2012 11:19:09 AM---I was on annual leave last week, and have not had an opportunity to return Ben's voicemail. IEO did

From: Jennifer Manville/R5/USEPA/US
To: Diane Nelson/R5/USEPA/US@EPA
Cc: Benjamin Giwojna/R5/USEPA/US@EPA, Kestutis Ambutas/R5/USEPA/US@EPA
Date: 03/26/2012 11:19 AM
Subject: Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

I was on annual leave last week, and have not had an opportunity to return Ben's voicemail.

IEO did not receive input from Water Division until early/mid-March. On March 13, I forwarded to Casey Ambutas a draft response from the RA to the KBIC Tribal President. Casey has shared this with the RA's office, and as of this morning IEO has not heard back whether the draft response needs modification or whether the RA has signed.

In terms of the information for the TES Filer plant in Manistee, I plan to share that with the environmental staff at Little River Band. Their inquiry was informal in nature so I thought our response could be as well.

Not sure if this closes the loop for you, but it is as much as I know.

▼ Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

**Diane
Nelson**

to: Jennifer Manville

03/26/2012

Cc: Benjamin Giwojna

From: Diane Nelson/R5/USEPA/US

To: Jennifer Manville/R5/USEPA/US@EPA

Cc: Benjamin Giwojna/R5/USEPA/US@EPA

Hi Jennifer -

As you can see from the messages below, there was quite a bit of back on forth to find out if we had closed the loop on this tribal information request. I thought we had. Can you please confirm if this is the case or not? Ben is not working today and I believe he left a message for you, so if you got back to Ben, I'm sorry I was not aware.

Thanks!

Sincerely,

Diane

Diane Nelson, Chief

State and Tribal Planning Section

U.S. Environmental Protection Agency
Region 5
Air and Radiation Division
77 W. Jackson Mail Code AR-18J
Chicago, IL 60604

(312) 886-2929
(312) 692-2152 (FAX)
nelson.diane@epa.gov

-----John Mooney/R5/USEPA/US wrote: -----

To: Benjamin Giwojna/R5/USEPA/US@EPA

From: John Mooney/R5/USEPA/US

Date: 03/21/2012 01:10PM

Cc: Diane Nelson/R5/USEPA/US@EPA, John Mooney/R5/USEPA/US@EPA

Subject: Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Susan keeps asking whether it has been resolved at Senior Staff. Maybe it has but no one has any information showing that anyone passed the various responses back to the tribes. In my view, Jenny was supposed to do that and maybe she has, we just need to confirm so that we can report to Susan that it has been taken care of. So if you could please confirm that with Jenny and she says that she passed along all of the ARD and WD responses, then I think we are done. If the tribes are unhappy with the answers, that's useful information but a different thing entirely so any insights there would be appreciated too.

Benjamin Giwojna---03/21/2012 12:51:59 PM---I thought we closed the loop on this in February? We provided the response to Cheryl and she passed

From: Benjamin Giwojna/R5/USEPA/US

To: Diane Nelson/R5/USEPA/US@EPA

Cc: John Mooney/R5/USEPA/US@EPA

Date: 03/21/2012 12:51 PM

Subject: Re: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

I thought we closed the loop on this in February? We provided the response to Cheryl and she passed it on to the RA.

Then on February 21, Jenny Manville asked if there were any requirements pertaining to the control of fugitive dust in the TES Filer City Station permit. So Dino pulled the following out of the permit and we provided it to Jenny on February 21.

TES specific permit conditions for dust:

VI. MONITORING/RECORDKEEPING

Records shall be maintained on file for a period of five years. **(R 336.1213(3)(b)(ii))**

1. Permittee shall keep records of quantities of water or dust suppressant used on storage piles and roadways and dates of application.² **(40 CFR 52.21), (R 336.1201(3))**

2. Permittee shall keep records of dates roadways and parking areas were swept.² **(40 CFR 52.21), (R 336.1202(3))**

IX. OTHER REQUIREMENT(S)

1. Permittee shall not operate the facility unless a program for continuous fugitive emissions control for all plant roadways, the plant yard, all material storage piles, and all material handling operations contained in a "Fugitive Dust Plan" submitted to and approved by the District Supervisor, is being implemented and maintained.²

(40 CFR 52.21)

Footnotes:

¹This condition is state only enforceable and was established pursuant to Rule 201(1)(b).

²This condition is federally enforceable and was established pursuant to Rule 201(1)(a).

I ran into Jenny in the elevator on the way home on February 24 and she mentioned that she would like to discuss this with the tribes along with their TEAs and possibly have a call about it later. I have not heard from Jenny since. Interestingly, I completed the first round of review on the MI TEAs last week and was somewhat surprised to see that none of this was mentioned as a priority in either the Little River Band TEA or Keweenaw Bay TEA. So I figured that we sufficiently responded to their questions and the loop was closed. Apparently that's not the case though? I will try to reach Jenny and find out what's going on and if our response was ever relayed to the tribes.

Thanks,

Ben @ 630-783-9837

-----Diane Nelson/R5/USEPA/US wrote: -----

To: Benjamin Giwojna/R5/USEPA/US@EPA

From: Diane Nelson/R5/USEPA/US

Date: 03/21/2012 11:39AM

Subject: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Hi Ben -

Please call Jennifer Manville to close the loop on this. Find out if she has provided this information to the tribe that was concerned about this, and as Cheryl committed, do they have any questions or need additional information.

Apparently, this came up again at a Senior Staff meeting. Susan asked if we had closed the loop on this. I thought it had been, but maybe Susan forgot, or it was not passed along to the tribe, or our or WD's response was not what the tribe was hoping for (I'm guessing the latter).

Please e-mail John and me regarding your communication with Jennifer so we can close the loop on this.

Thank you!

Diane

-----Forwarded by Diane Nelson/R5/USEPA/US on 03/21/2012 11:32AM -----

To: Timothy Henry/R5/USEPA/US@EPA

From: John Mooney/R5/USEPA/US

Date: 03/21/2012 11:27AM

Cc: Diane Nelson/R5/USEPA/US@EPA, Benjamin Giwojna/R5/USEPA/US@EPA

Subject: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Here is what we sent. Cheryl sent it to Susan, copying Jenny Manville and others. I am going to have our tribal folks check in with Jenny to see if she passed the various responses along to the tribe. I will let you know what we hear.

----- Forwarded by John Mooney/R5/USEPA/US on 03/21/2012 11:17 AM -----

From: Sara Breneman/R5/USEPA/US

To: George Czerniak/R5/USEPA/US@EPA

Cc: Bruce Sypniewski/R5/USEPA/US@EPA, John Mooney/R5/USEPA/US@EPA, MaryPat Tyson/R5/USEPA/US@EPA

Date: 03/05/2012 01:44 PM

Subject: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

----- Forwarded by Sara Breneman/R5/USEPA/US on 03/05/2012 01:45 PM -----

From: George Czerniak/R5/USEPA/US
To: Sara Breneman/R5/USEPA/US@EPA
Date: 02/02/2012 01:58 PM
Subject: Fw: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting possible harmful environmental activity. To do so, visit EPA's website at <http://www.epa.gov/compliance/complaints/index.html>

----- Forwarded by George Czerniak/R5/USEPA/US on 02/02/2012 01:57 PM -----

From: Cheryl Newton/R5/USEPA/US
To: Susan Hedman/R5/USEPA/US@EPA
Cc: "Tinka Hyde" <Hyde.Tinka@epa.gov>, Jennifer Manville/R5/USEPA/US@EPA, George Czerniak/R5/USEPA/US@EPA, Sypniewski.Bruce@epa.gov, John Mooney/R5/USEPA/US@EPA
Date: 02/02/2012 01:52 PM
Subject: Re: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Hi Susan - The following is a summary of the Air and Radiation Division's (ARD) activity regarding the tribal inquiries on the TES Filer City Station and L'Anse Warden Electric Company LLC facilities in Michigan.

ARD mapped both facilities with respect to the Little River Band of Ottawa and Keweenaw Bay Indian Community's reservation boundaries and trust lands. We were able to confirm that neither facility is located in Indian Country. Therefore, Michigan is the appropriate permitting authority and EPA has its traditional federal oversight role as opposed to direct implementation of the federal program in Indian Country. ARD permitting and enforcement staff looked into whether there are any applicable regulations in the state's permit rules and also at the permits themselves to see if there is anything pertaining to fugitive emissions or fugitive dust from outside storage of material at these sites. The preliminary indication is that both facilities are permitted to burn these types of materials and we have yet to identify any violation of an applicable regulation. ARD also coordinated with relevant staff from the Michigan Department of Environmental Quality (MDEQ) regarding the state's permitting and inspection activities at both facilities. The MDEQ District Supervisor informed ARD that the Keweenaw Bay Indian Community submitted comments about fugitive dust from the L'Anse facility during the Renewable Operating Permit comment period. MDEQ inspectors subsequently visited the facility a couple of times and found no irregularities from the onsite chipping operation. If the facility is uncontrolled (which is likely), the only requirement would be a 20% opacity limit which MDEQ feels there's a very minimal chance the facility would violate. If the facility is controlled, the opacity limit might not have even made it into the permit. We are continuing to coordinate with MDEQ on that aspect.

Regarding the biomass facility, railroad ties are treated with creosote or other wood treatment chemicals such as copper chrome arsenate. However, they are not classified as hazardous waste under RCRA and are commonly burned at biomass facilities for both disposal purposes and their high BTU content. They may be considered a nonhazardous solid waste, which would classify the facility as a Commercial/Industrial Solid Waste Incinerator (CISWI) unit and would be regulated under Section 129 of the Clean Air Act. EPA is currently taking public comment on the CISWI rule.

ARD apprised the Office of Regional Counsel of both tribes' inquiries and our investigative efforts. Additionally, ARD added this item to the Tribal Environmental Agreement tracking matrix for the Little River Band of Ottawa and Keweenaw Bay Indian Community and we plan to follow up with both tribes during the Region 5 Tribal Environmental Program Management Conference next month.

Please let me know if you have any questions or require additional information. Thanks

Susan Hedman---01/27/2012 02:55:19 PM---Thanks Jenny -- and thanks again for your help with the meeting last night in Marquette. I was real

From: Susan Hedman/R5/USEPA/US
To: Jennifer Manville/R5/USEPA/US@EPA

Cc: "Tinka Hyde" <Hyde.Tinka@epa.gov>, "Cheryl Newton" <Newton.Cheryl@epa.gov>
Date: 01/27/2012 02:55 PM
Subject: Re: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

Thanks Jenny -- and thanks again for your help with the meeting last night in Marquette.

I was really surprised to read about this in the hot issues for my trip. The immediate concerns seem to be about water contamination -- but I am also wondering about the air issues associated with burning RR ties.

Tinka/Cheryl -- I am copying you on this e-mail in the hope that you will be able to accelerate the investigation that Jennifer initiated. I'd like to go back to Chairman Swarz about this as soon as possible.

Thanks!

From: Jennifer Manville
Sent: 01/27/2012 05:13 AM CST
To: hedman.susan@epa.gov
Subject: Non-Mining Issue Raised by Tribal President Swarz at January 26 Listening Session

At last evening's session, Chris Swarz raised an issue related to the electric power plant in L'Anse, Michigan. I learned of this issue earlier this month and have reached out to the Air and Radiation Division and Water Division to request information on applicable federal requirements which the state of Michigan should be implementing under their approved programs. While staff in these Divisions have indicated they are looking into the issue, I'm sure that if you were able to express interest in the issue our response to the Tribe would be expedited.

-----Forwarded by Jennifer Manville/R5/USEPA/US on 01/27/2012 06:05AM -----

To: Benjamin Giwojna/R5/USEPA/US@EPA, Brian Bell/R5/USEPA/US@EPA
From: Jennifer Manville/R5/USEPA/US
Date: 01/19/2012 09:09AM
Subject: Fw: Federal Requirements for Open Air Storage of Industrial Materials

I had another call from KBIC on the issue below, providing some additional perspective on their concerns. At L'Anse Warden, apparently the railroad ties are chipped prior to being fed into the plant. The chipping process produces significant amounts of fugitive dust which leaves the plant property and drifts over Keweenaw Bay and the surrounding area. The chipping happens outside with no controls over the process or the storage of the material. There have been some claims that workers have been impacted.

----- Forwarded by Jennifer Manville/R5/USEPA/US on 01/19/2012 09:05 AM -----

Federal Requirements for Open Air Storage of Industrial Materials

Jennifer Manville to: Benjamin Giwojna, Brian Bell

01/17/2012 12:31 PM

Jennifer Manville
Kestutis Ambutas

Cc:

From:

Jennifer Manville/R5/USEPA/US

To:

Benjamin Giwojna/R5/USEPA/US, Brian Bell/R5/USEPA/US

Cc:

Kestutis Ambutas/R5/USEPA/US@EPA

Ben and Brian,

Over the past month I have met with a number of tribes in Michigan to discuss the status of the activities in their Environmental Agreements. Both Little River Band and Keweenaw Bay Indian Community raised similar issues concerning the regulation of industrial materials that are stored outside. Listed below are more particulars on each case. My question to each of you is whether this storage activity may be regulated under the Clean Air Act (wind-blown particles) and/or Clean Water Act (storm-water runoff), and if so is the state of Michigan required to implement those regulations under its EPA-approved program?

TES Filer City Station (700 Mee Street in Filer City, Michigan) is a 60 MW electric power generator that is designed to use primarily coal with secondary fuels of wood waste, petroleum coke, and tire-derived fuel. Coal is brought to the plant via Lake Michigan and Manistee Lake, and then stored in open piles adjacent to Manistee Lake. There appears to be some sort of containment for the pile at the Station. However, coal is also stored at a nearby property and there appears to be no controls associated with this pile. While the facility is not located within its reservation boundaries, the Little River Band of Ottawa Indians is concerned about the potential impacts to Manistee Lake from stormwater run-off through the piles and wind-blown coal dust. Manistee Lake is an important cultural and subsistence resource and the Band's historical reservation bisects the northern portion of the Lake.

L'Anse Warden Electric Company LLC (157 South Main Street in L'Anse, Michigan) is operating a 20 MW biomass plant. The plant is designed to use forest products (wood chips, bark, and fines), paper mill wood residues, railroad ties, and tire chips. L'Anse Warden contracts with Norman Pestka Construction for 400 tons of biomass fuel each day. Pestka Construction has built a barge-loading facility on Lake Superior to allow it to import fuel such as railroad ties. The Keweenaw Bay Indian Community is concerned about the significant piles of railroad ties that are stored near Lake Superior for use at the plant. There may be potential for contamination from precipitation run-off through the piles of treated wood waste. While the facility is located just off the reservation, the intake for the Tribe's community drinking water system is located nearby in Lake Superior, and the area is also an important fish spawning area.

Thanks for your help with these issues.

Jenny

Jennifer Manville, Tribal Liaison
U.S. EPA Region 5
Indian Environmental Office
400 Boardman Avenue
Traverse City, Michigan 49684
(231) 922-4769